

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARK TERRENCE ANDREWS,

Plaintiff,

v.

ROBERT PITTMAN, et al.,

Defendants.

Case No. 25-cv-03390-SK

**ORDER OF DISMISSAL FOR  
FAILURE TO PROSECUTE**

Plaintiff Mark Terrence Andrews, who is representing by counsel, filed this action on April 24, 2025. (Dkt. No. 2.) All parties consented to the jurisdiction of a magistrate judge. (Dkt. Nos. 11, 13.) Defendants filed a motion to dismiss Plaintiff's complaint on June 26, 2025. (Dkt. Nos. 20, 23.) Plaintiff did not timely file an opposition to the motion. Plaintiff did file a motion to disqualify Defense Counsel. (Dkt. No. 26.)

Due to Plaintiff's failure to oppose Defendants' motion, the Court issued an order to show cause warning Plaintiff that "failure to prosecute may result in dismissal of Plaintiff's case under Federal Rule of Civil Procedure 41(b)" and requiring Plaintiff to show cause in writing by no later than July 29, 2025, why this case should not be dismissed for failure to prosecute. (Dkt. No. 31.)

That date has now passed, and Plaintiff has not filed an opposition to the motion to dismiss or responded to the order to show cause. Accordingly, and for the reasons set forth below, this action is DISMISSED WITHOUT PREJUDICE for failure to prosecute.

Federal Rule of Civil Procedure 41(b) permits a district court to *sua sponte* dismiss an action for failure to prosecute or to comply with a court order. *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005). "In determining whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the following factors are weighed: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its

docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). In this case, four of the five factors weigh in favor of dismissal.

The first two factors—the public interest in expeditious resolution of litigation and the Court’s need to manage its docket—relate to the “efficient administration of judicial business for the benefit of all litigants with cases pending.” *Nealey v. Transportacion Maritima Mexicana, S.A.*, 662 F.2d 1275, 1279 (9th Cir. 1980). Plaintiff has not filed an opposition or responded to the Court’s order to show cause, despite being given ample time to do so. Such non-compliance has delayed litigation, *Yourish v. California Amplifier*, 191 F.3d 983, 991 (9th Cir. 1999), and “consumed some of the [C]ourt’s time that could have been devoted to other cases on the docket,” *Pagtalunan*, 291 F.3d at 642.

As to the third factor—delay is presumed to prejudice defendants, but the plaintiff may rebut that presumption by presenting a non-frivolous excuse for delay. *In re Eisen*, 31 F.3d 1447, 1452-53 (9th Cir. 1994). Plaintiff has not come forward with any excuse for his untimeliness, despite the Court’s request for such information.

The fourth factor likewise favors dismissal, as less drastic sanctions have not been effective. The Court has an “obligation to warn the plaintiff that dismissal is imminent.” *Oliva v. Sullivan*, 958 F.2d 272, 274 (9th Cir. 1992). The Court did so in its order to show cause, and Plaintiff still did not respond.

The last factor, which favors disposition on the merits, by definition weighs against dismissal. *Pagtalunan*, 291 F.3d at 643.

In sum, because four of the five factors weigh in favor of dismissal, the Court concludes that dismissal of this action for failure to prosecute is warranted. *See Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (dismissal is appropriate “where at least four factors support dismissal . . . or where at least three factors ‘strongly’ support dismissal”) (internal quotation marks and citation omitted).

The Court thus DISMISSES this action WITHOUT PREJUDICE. Defendants’ motion to dismiss and Plaintiff’s motion to disqualify counsel are DENIED AS MOOT. The order to show

cause is DISCHARGED.

**IT IS SO ORDERED.**

Dated: July 30, 2025



---

SALLIE KIM  
United States Magistrate Judge